S.B. CIVIL SALES TAX REVISION NO.1/2005

Asstt. Commissioner, Bikaner.
vs.
M/s. Bikaner Woolen Mills Private Ltd., Bikaner.

Date : 18.8.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sangeet Lodha, for the petitioner.

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Heard learned counsel for the petitioner.

Brief facts of the case are that the assessing authority passed the order of assessment for the year 1998-99 under Section 9 of the CST Act, 1956. Assessing authority granted tax exemption on expansion of existing unit w.e.f. 21.4.97 under Rajasthan Sales Tax Incentive Scheme, 1987. The assessee was assessed for tax on 85% of their turn over from originally installed spindles. The said order of assessing authority dated 28.3.2001 was challenged by filing appeal before the Deputy Commissioner (Appeals), Commercial Taxes, Bikaner who vide order dated 31.5.2002 set aside the order of the assessing authority and remanded the matter back to the assessing authority. The order of remand was challenged by the department by filing appeal before the Tax Board, Ajmer who considered the matter and held that the matter is required to be assessed fresh by the assessing authority in light of the correct facts. Therefore, even after setting aside the

remand order passed by the Deputy Comissioner (Appeals), directed the assessing authority to decide the matter in the light of decision given by the Tax Board.

Learned counsel for the petitioner submitted that though the departmental appeal was allowed but still the Tax Board directed the assessing authority to pass fresh order and that is wrong. According to learned counsel for the petitioner, the assessing authority by its impugned order dated 28.3.2001 rightly assessed the tax liability of the assessee.

I have carefully looked into the reasons given by the appellate authority in its order dated 31.5.2002 and the Tax Board in its order dated 26.5.2003.

It is clear from the order of the appellate authority itself that the appellate authority proceeded on wrong assumption of the fact and the order appears to be self contradictory also. The Tax Board took note of one of the fact that the appellate authority proceeded on assumption that the apportionment of total production after expansion in ratio of 45%, 55% was approved by DLSC while sanctioning the benefits under the Scheme whereas the position was not so and that was the contention and formula suggested by the assessee only.

In view of the above, since the matter has been remanded to the assessing authority for passing a fresh

order after carefully finding out what are the production figures from the originally installed spindles as on 16.3.90, the date when they applied for the benefit of tax exemption and after taking into account the technical details about their achievable capacity of the originally installed spindles as on 21.4.97, there is no reason for interference by this Court. The Tax Board also observed that the assessing authority could have assessed the respondents to tax on their actual production achieved by them from the originally installed spindles during the year 1998-99 or atleast 85% of their achievable production capacity from the originally installed spindles, whichever was high. By this order of remand, the Tax Board gave two options to the assessing authority ; on the basis of actual production achieved by them from the originally installed spindles during the year 1998-99 or atleast 85% of their achievable production capacity from the originally installed spindles, whichever was high.

In view of the above reasons given by the Tax Board and in view of the liberty given to the assessing authority, there arises no reason to interfere in the impugned order under revisional jurisdiction.

Accordingly, this revision petition, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya